

9 Official Opinions of the Compliance Board 149 (2014)

- ◆ **PUBLIC BODY** *DETERMINED NOT TO BE A PUBLIC BODY*
 - COMMITTEE APPOINTED BY SCHOOL BOARD PRESIDENT
- ◆ **MEETING** – *DETERMINED NOT TO BE A MEETING*
 - GATHERING NOT ATTENDED BY A QUORUM

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

August 15, 2014

Re: Montgomery County Board of Education
Danuta Wilson, Complainant

Danuta Wilson, Complainant, alleges that the Montgomery County Board of Education (“School Board”) violated the Open Meetings Act when a committee appointed by the School Board’s president held a meeting to which it did not invite the public. Complainant states that the committee met to discuss the School Board’s policies for reimbursing its members’ travel expenses and that the meeting should have been open to the public. The School Board responds that the committee was not subject to the Act and that the meeting was not a meeting of the School Board (which is subject to the Act) because a quorum of the School Board’s members did not attend the committee meeting. The School Board further states that, in any event, the committee has since decided to invite the public to its meetings and has already met publicly.

We find that the committee was not subject to the Act and so did not violate it. We further find that the School Board did not hold a meeting subject to the Act and did not violate it.

As to the committee, an entity is subject to the Act only if the entity falls within the Act’s definition of a “public body.” That definition, which appears in §10-502(h) of the State Government Article of the Maryland Code, sets forth two alternative approaches for determining whether a particular multi-member committee is a “public body.”¹ The first approach

¹ These principles are explained in *City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299,323 (2006); see also 7 OMCB Opinions

requires us to look to whether the entity was created by the State's Constitution, a State statute, a county or municipal charter or ordinance, a rule, resolution, or bylaw, or an executive order of the Governor or executive authority of a county or municipality. *See* § 10-502(h)(1)(ii). This committee was not created by any of these means; instead, it was appointed by the School Board's president, who reported that fact in a memorandum to the School Board. Under the second approach, we look to whether the entity was appointed by the Governor, the chief executive authority of a county or municipality, persons subject to those executives' "policy direction," or certain State entities. *See* § 10-502(h)(2)(i), (ii). Again, this committee was not created in any of the listed ways. The School Board president is not the executive of the State or one of its political subdivisions. Nor, as an elected official, is he a person subject to the "policy direction" of any of those executives.

As to the School Board itself, the Act's open-meeting requirement applies only when a quorum of a public body's members convenes to consider or transact public business. *See* §§ 10-505 (providing that a public body must "meet" in open session unless the Act expressly provides otherwise); 1-502(g) (defining "meet" to mean "to convene a quorum of a public body for the consideration or transaction of public business"). This three-member committee did not form a quorum of the eight-member School Board, and it appears that no other member attended the committee's meetings. Because the School Board did not "meet," as the statute defines that term, it did not violate the Act with respect to the committee's meetings.

In sum, the Act did not apply to the discussions held by three members of the School Board out of the presence of the other members. We have not reached the School Board's alternative argument that the topics discussed did not fall within the scope of the Act.

Open Meetings Compliance Board

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